HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

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W.A. NO. 81 OF 2006.

BETWEEN:

M/s P. Chandraiah & Co.,

H.No.11-25-131, M.G. Road,

Warangal, a partnership firm

Rep. By its partner Mr.A.Sudhakar,

R/o H.No.12-3-132, Yellam Bazar,

Warangal.

.....

APPELLANT.

AND

1. The Vijaya Bank, Tailors' Street Branch,

Hanamkonda, Warangal,

and another.

….. RESPONDENTS.

:: JUDGMENT ::

Counsel for the appellant : Mr. P. Keshava Rao.

Counsel for the respondent No.1 : Mr. E. Ajay Reddy.

Counsel for the respondent No.2: : Mr. V.Durga Nageswara Rao.

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30th JANUARY, 2006.

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Per G.S. Singhvi, CJ

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This is an appeal for setting aside order dated 12.12.2005 passed by the learned Single Judge in W.P.No.26412 of 2005 whereby he refused to interfere with the decision of Municipal Corporation, Warangal, (for short 'the Corporation'), to invoke the bank guarantee given by the appellant in furtherance of agreement dated 02.07.2005.

It is borne out from the record that on the basis of highest bid given by it, the

appellant was awarded contract to collect Trade Licence Fee for the year 2005-2006 i.e., with effect from 01.03.2005 to 28.02.2006. The appellant deposited 1/4th of the total agreed amount and signed the agreement bond, which is available on pages 19 to 23 of the paper-book. In terms of the agreement, the appellant was required to deposit a specified sum on monthly basis. Therefore, Commissioner of the Corporation sent communication dated 20-8-2005 requiring the appellant to pay the due amount with a stipulation that failure to do so may result in forfeiture of EMD. In its reply dated
31-8-2005, the appellant requested that a sum of Rs.19,50,000/- may be deducted from the amount collected by the Corporation and the balance of Rs.21,87,500/- will be paid. After two months, the Commissioner of the Corporation issued notice dated
3-11-2005 to the appellant for payment of monthly installments as per the agreement. This time, the appellant sent letter dated 17-11-2005 complaining that full particulars of the amount collected by the Corporation had not been furnished and that it was unable to recover because cloth merchants, chit funds, private educational institutions and other shops have approached the High Court. This did not satisfy the authorities of the Corporation and its Commissioner issued notice dated 21-11-2005 for levy of penal interest on each installment. The appellant protested against the proposed levy of penal interest and submitted representation dated 28-11-2005 reiterating its stand in the matter of payment of the installments of Trade Licence Fee. This was followed by notice dated
1-12-2005 issued by the Commissioner of the Corporation intimating the appellant that if it fails to pay the balance amount, the same would be made good from the bank guarantee.

The appellant challenged the threatened invoking of bank guarantee by filing writ petition under Article 226 of the Constitution of India. In the affidavit filed by
Sri A.Sudhakar, one of the partners of the appellant, it was averred that on account of the interim stay orders passed by the High Court in the writ petition filed by different parties, the Trade Licence Fee could not be collected and ignoring this, the authorities of the Corporation have initiated proceedings for

levy of penal interest and recovery of the so-called balance from the guarantee. It was further averred that the Corporation should have, in terms of the agreement, adjusted the amount of
Rs.19 lakhs against the total due of Rs.21,87,500/- which became due as on 31-8-2005.

The learned single Judge, after noticing the facts and making a reference to the judgment of the Supreme Court in **National Highway Authority of India Vs. M/s Ganga Enterprises** AIR 2003 SC 3823, declined to entertain the appellant's prayer by observing that in a contractual matter, the High Court will not exercise its power under Article 226 of the Constitution.

We have heard learned counsel for the parties and carefully perused the record. In our opinion, it is neither necessary nor proper for us to adjudicate on the contentious issue whether the appellant's failure to deposit the amount due for the months of July and August, 2005 and thereafter amounted to deliberate violation of the agreement, but we have no hesitation to hold that the Corporation did not commit any jurisdictional error or patent illegality by insisting on payment of the monthly installments in accordance with the terms of agreement, and then issuing notice for invoking the bank guarantee. The explanation given by the appellant for its failure to deposit the amount, namely, its inability to collect the Trade Licence Fee on account of the interim orders passed by the High Court in W.P.No.22477 of 2005 and similar petitions appears attractive but cannot be accepted because a bare reading of the interim orders passed by this Court shows that the first order was passed on
23-8-2005 in W.P.No.18616 of 2005 and the other orders were passed on 4-10-2005, 7-10-2005, 18-10-2005 and 19-10-2005. None of the interim orders was passed in the month of July 2005. One order was passed in the fourth week of August 2005 and the remaining orders were passed in October 2005 in favour of those who had filed writ petitions. Therefore, the appellant was not entitled to withhold the installment which was payable for the month of July 2005. Even thereafter, the appellant could only seek proportionate

reduction in the amount of installment in the light of the interim orders passed by the High Court. Under no circumstance it could withhold payment of the total amount of monthly installments. Therefore, the action initiated by the Corporation for recovery of the installments in accordance with the terms of agreement cannot be faulted.

We are also in agreement with the learned Single Judge that jurisdiction of this Court under Article 226 of the Constitution cannot be exercised for relieving the appellant of its contractual obligation to pay the amount of monthly installments and the question whether the appellant was justified in not complying with the terms of condition cannot be decided in exercise of that jurisdiction.

In the result, the writ appeal is dismissed. However, liberty is given to the appellant to pursue its remedy before the Civil Court. No costs.

G.S. SINGHVI. CJ

G. BHAVANI PRASAD. J

Dated: 30.01.2006.

VRK / svs

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HON'BLE SRI G.S. SINGHVI,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD.

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W.A.NO. 81 OF 2006.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

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Dt: 30-01-2006.